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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VINCE CHHABRIA, JUDGE

SIMON AND SIMON, PC, d/b/a CITY	)	
SMILES and VIP DENTAL SPAS,	)	
individually and on behalf of	)	
others similarly situated,	)	
	)	
Plaintiffs,	)	
VS.	)	NO. 20-cv-03754-VC
	)	
ALIGN TECHNOLOGY, INC.,	)	
	)	
Defendant.	)	
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MISTY SNOW, individually and on	)	
behalf of others similarly	)	
situated,	)	
Plaintiff,	)	
	)	
VS.	)	NO. 21-cv-03269-VC
	)	
ALIGN TECHNOLOGY, INC.,	)	San Francisco, California
	)	Wednesday,
Defendant.	)	January 19, 2022
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TRANSCRIPT OF PROCEEDINGS

FROM THE OFFICIAL ELECTRONIC SOUND RECORDING

1:08 P.M. to 1:17 P.M.

APPEARANCES:

For Plaintiff Simon and Simon:

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BY: JOHN RADICE, ESQ.

Transcribed By: BELLE BALL, CSR 8785, CRR, RDR

Official Reporter, U.S. District Court.

(Appearances continued, next page)

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Wednesday - January 19, 2022

1:08 p.m.

P R O C E E D I N G S

**THE COURTROOM DEPUTY:** Calling Case No. 20-CV-3754, Simon and Simon PC versus Align Technology, Inc., and 21-CV-3269, Snow versus Align Technology, Inc.

Counsel for Simon and Simon, please state your appearances for the record.

**MR. WALKER:** My name is Dan Walker from Berger Montague on behalf of the plaintiffs in Simon and Simon.

**THE COURT:** All right.

**MR. RADICE:** John Radice, Radice Law Firm, also on behalf of plaintiffs Simon and Simon.

**THE COURT:** Hello.

**THE COURTROOM DEPUTY:** Okay. And for plaintiff Snow?

**MR. BERMAN:** Good afternoon, Your Honor. Steve Berman, Hagens Berman, for Snow.

**THE COURT:** Hi.

**MR. PIERCE:** Good afternoon, Your Honor. Rio Pierce from Hagens Berman on behalf of the Snow plaintiffs.

**THE COURTROOM DEPUTY:** And for Align Technology?

**MR. PINEGAR:** Noah Pinegar, Paul Hastings, on behalf of defendant Align Technology. I'm expecting a colleague or two momentarily, Your Honor, but they have been delayed.

**THE COURTROOM DEPUTY:** There is one of them coming in right now, Steven Marenberg.

1           **MR. LaCOMB:** Good afternoon, Your Honor, this is Tim  
2 LaComb for plaintiffs VIP Dental Spas.

3           **THE COURT:** All right, hi.

4           **THE COURTROOM DEPUTY:** Mr. Marenberg, please make  
5 your appearance.

6           **MR. MARENBERG:** Good afternoon, Your Honor. Steve  
7 Marenberg from Paul Hastings on behalf of Align Technology, on  
8 both cases.

9           **THE COURT:** All right. Okay. So, let's see. I  
10 think we we need to figure out what to do. The -- let me  
11 just say first of all, on the motion to dismiss for -- for the  
12 Snow case, the case is going to go forward. I just need to --  
13 I'm just working, still working out -- working through a  
14 couple of things.

15           So, you know, I hope -- has everybody been operating on  
16 the assumption that the case is going forward, and have you  
17 started discovery? What's the situation in Snow?

18           **MR. PIERCE:** Your Honor, Rio Pierce. We have started  
19 discovery. We've served document requests on Align. We've  
20 served document requests on a number of third parties. We  
21 started negotiations with third parties.

22           Certain of those third parties have expressed an interest  
23 in Your Honor's order. We are, you know, attempting to  
24 elucidate to them that at least for certain of the sort of  
25 pass-through-related subpoenas, we anticipate that it will not

1 affect their discovery obligations. We have not --

2 **THE COURT:** I'm sorry about the delay.

3 **MR. PIERCE:** No.

4 **THE COURT:** (Inaudible)

5 **MR. PIERCE:** And obviously we have not subpoenaed  
6 Smile Direct Club yet because, depending on Your Honor's  
7 order, we didn't think it would make sense to subpoena them  
8 when they may not be in the case, or -- or quite integral, so  
9 that is not a subpoena we've issued yet. So we've been making  
10 progress. But of course, some things will adjust, depending  
11 on the contours of Your Honor's order.

12 **THE COURT:** Okay. And in light of that, where are we  
13 on the schedule? Do we need to make any -- are there any  
14 adjustments that need to be made?

15 What do you all propose?

16 **MR. PIERCE:** Well, Your Honor, we did have an  
17 unfortunate situation, in our case management -- in our 26(f)  
18 report we had agreed with Align that they would  
19 contemporaneously to produce us what they produced in the  
20 Simon and Simon action, which is something that's very common  
21 in these cases when there are multiple plaintiffs.

22 They have not done that several times in a row, which is  
23 concerning to us. For instance, they made a production in late  
24 December to the Simon and Simon plaintiffs that we only learned  
25 about when we reviewed the case-management statement in Simon

1 and Simon that was submitted. And once we raised the issue  
2 with them, they said there was some sort of technical  
3 difficulty that had caused them to delay a month in producing  
4 the materials to us. We don't understand what technical  
5 difficulty that was and it delayed our ability to effectively  
6 litigate the case. So that's one issue that we want to get  
7 sorted out.

8 Apart from that I would say, assuming Align does start  
9 complying with the agreement that we have reached with them, we  
10 think it would probably make sense to revisit the schedule once  
11 we have Your Honor's order and know the full contours of the  
12 case, what the schedule should look like, at least for our  
13 action.

14 **THE COURT:** Okay. And --

15 **MR. MARENBERG:** Your Honor, may I respond to that  
16 just briefly?

17 **THE COURT:** Sure.

18 **MR. MARENBERG:** One, we have, as of today, produced  
19 to them everything they've gotten in Simon and Simon.

20 **THE COURT:** Okay, good.

21 **MR. MARENBERG:** And two, we paused for a second, and  
22 I'll tell you two reasons why we did. One was --

23 **THE COURT:** Not really sure I care.

24 **MR. MARENBERG:** Okay. I don't, frankly, want to do  
25 tit for tat here on who did what to whom. And therefore, if

1     you don't care, I'm going to let it go.

2             **THE COURT:** Okay. So did we decide that these cases  
3     should go on the same track in terms of discovery deadlines  
4     and, you know, summary judgment, and last day to amend  
5     pleadings, and all that stuff?

6             **MR. MARENBERG:** Right now, the schedules are in  
7     parallel on those matters. Whether they're -- at least,  
8     through the pretrial process.

9             **THE COURT:** But are we in a situation now where it  
10    might be possible to complete discovery in Simon and Simon but  
11    not in Snow because -- because, you know, we haven't finally  
12    settled the pleadings in Snow yet?

13            **MR. MARENBERG:** So as far as we're concerned -- and  
14    this is why we've produced, even though the pleadings argument  
15    settled in Snow, all of the documents to the Snow plaintiffs  
16    that the Simon and Simon plaintiffs have gotten.

17            If the contours of the Snow case do not include the  
18    Section 1 case where the alleged is that purchasers of SDC  
19    aligners have been hurt, then we are in a position to do this,  
20    to continue parallel discovery in both cases on the same  
21    deadlines.

22            Now, it may be that the deadlines may need to be moved.  
23    And there's some wiggle room in our schedule.

24            **THE COURT:** But if the Smile Direct stuff is part of  
25    the case that might mean that things need to be moved, the

1 dates need to be moved in the Snow case, at that point would  
2 it make sense to move the dates for everybody so that both  
3 cases stay on the same track?

4 **MR. MARENBERG:** I still think there is going to be a  
5 substantial overlap in depositions. And in fact, if there's  
6 discovery in the Smile Direct aspects of the case, I think  
7 that is relatively discrete, and -- you know, from the -- I'll  
8 call it the core Section 2 monopolization allegations that may  
9 exist in both cases.

10 So I think it does make sense to keep the schedules as is,  
11 right now, until we get that settled, and continue to  
12 coordinate. And it may be, depending on how much discovery  
13 there is on the SDC-related matters, that we don't need to  
14 change the schedule at all. That's something we'll know  
15 further down the road.

16 But we should certainly coordinate discovery on the core  
17 Section monopolization claims, which are virtually identical.

18 **THE COURT:** Okay. Well, diving back into the Smile  
19 Direct issue is, you know, pretty much at the top of my list.  
20 It will take me a little while to dive back into it, I'll have  
21 to refresh my recollection. But it shouldn't be long before  
22 you get a ruling.

23 And then I'd be perfectly hope to have another CMC with  
24 everybody. And I could just set it. You know, I'll issue my  
25 ruling and set the CMC for, like, two weeks thereafter,



1 something like that.

2 Is that okay?

3 **MR. MARENBERG:** That's fine, Your Honor. On the  
4 schedule that we have now, we have quarterly CMCs set, in any  
5 event. But it might be worth -- so we can either wait for the  
6 next quarterly CMC, or we can do it the way you suggested.  
7 Either one would be fine.

8 **THE COURT:** I suppose if I issue an order, and the  
9 Smile Direct part of the case is still in, then you can begin  
10 your discovery on that and we can talk about scheduling at the  
11 next CMC. Talk, talk about whether the -- whether the  
12 schedule needs to be adjusted or whatever at the next CMC.

13 I mean, does that make sense? I'm fine to do it that way  
14 if that makes sense to you all.

15 **MR. MARENBERG:** I think that makes more sense,  
16 because we'll have -- we'll have had time, a little more time  
17 to digest your order, figure out where we are, if in fact  
18 SDC-related discovery goes forward. And, be in a better  
19 position to make a better judgment as to whether we need to  
20 extend the schedule in one of the cases or not.

21 **THE COURT:** Sound good to me. Is that okay with  
22 everybody?

23 **MR. PIERCE:** I think, depending on the timing of  
24 Your Honor's order, that makes sense. I agree. Some sort of  
25 CMC relatively soon after Your Honor's order makes sense. But

1 if we don't have to schedule an extra one, that would  
2 obviously be the most efficient course.

3 **THE COURT:** Okay, well, we'll see where we are. I'll  
4 see where I am when I'm done with the ruling, and I'll let you  
5 know.

6 Is there anything else that we can do for you right now?

7 **MR. MARENBERG:** As far as Align is concerned, no.

8 **THE COURT:** Okay. Great. Thanks very much.

9 **MR. PIERCE:** Thank you, Your Honor.

10 **MR. LaCOMB:** Thank you, Your Honor.

11 (Proceedings concluded)  
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**CERTIFICATE OF TRANSCRIBER**

I, BELLE BALL, CSR 8785, CRR, RDR, hereby certify that the foregoing is a correct transcript, transcribed to the best of my ability from the official electronic sound recording of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Wednesday, January 19, 2022